IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC. APP. No.265/2007

Judgment delivered on: October 10, 2007

National Insurance Co. Ltd. ..... Appellant
Through: Mr.S.L. Gupta, Adv.

versus

Sulo Devi & Ors. ..... Respondents
Through: Mr.N.K. Jha, Adv.

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR,

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J. Oral:

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The appellant, National Insurance Company Ltd., insurer of the offending vehicle has preferred an appeal challenging the impugned order dated 15.03.2007 passed by the learned MACT. The impugned award has arisen out of the claim petition filed by respondent Nos.1 to 7 against the appellant as well as against respondent Nos.8 & 9 claiming compensation for

the death of Shri Vishnu Dev Mandal. The brief facts which are necessary for deciding the present appeal inter alia are that respondent Nos.1 to 7 are the legal heirs of deceased Shri Vishnu Dev Mandal who died on 19.09.2004 in the hospital. On 10.09.2004 while waiting for the TSR in which all of them were travelling while moving towards New Delhi Railway Station the deceased was hit by the offending bus bearing registration no. DL 1PA 4351 driven by respondent No.3 rashly and negligently. As a result of the said accident, the deceased Sh. Vishnu Dev Mandal received serious injuries and was admitted to the hospital where ultimately he succumbed to his injuries. The Tribunal after taking into consideration the facts of the case as well as evidence led by the parties had passed an award in the sum of Rs. 6,28,000/-along with interest at the rate of 8% per annum payable from the date of the institution of the petition till the date of realisation. The said order passed by the Tribunal is now under challenge in the present appeal.

I have heard learned counsel for the parties at considerable length. Counsel appearing for the respondent has taken a preliminary objection to the very maintainability of the present appeal on the ground that the appellant cannot assail the

findings of the Tribunal on the quantum of compensation as determined by the Tribunal. Counsel contends that the appellant had not taken over the defence of the owner and driver as envisaged under Section 170 of the Motor Vehicles Act and, therefore, is debarred from challenging the impugned award so as to assail the findings of the Tribunal on the quantum of compensation. Counsel for the respondent has placed reliance on the following judgments of the Apex Court:-

1. (2002) 7 SCC 456, National Insurance Co. Vs. Nicollata Rohtagi

2. 1998 ACJ 513, Shankarayya & Anr. vs. United India Insurance Co. Ltd.

The contention of counsel for the respondent is that right to file an appeal is a statutory right and the insurer can assail the findings of the Tribunal only under Section 149(2) of the Motor Vehicles Act. Counsel further contends that it is only in a case where there is collusion between the claimants and the insured, the insurer can assail the findings of the Tribunal on the grounds of quantum as well as negligence subject however to the condition that the insurer had taken permission of the Court to take over the defence of the owner or driver as the case may be as envisaged under Section 170 of the Motor Vehicles Act. No

such permission was sought by the appellant under Section 170 of the Motor Vehicles Act by the Tribunal and, therefore, in the absence of the same, the appellant being the insurer of the offending vehicle cannot maintain the present appeal on grounds other than those available to it under Section 149(2) of the Motor Vehicles Act.

On the other hand, counsel for the appellant sincerely disputes this position and contends that the insurer cannot be rendered remedlyless especially in a case where the Tribunal has awarded an excessive amount of compensation in favour of the claimants ignoring all basic principles of law for the award of compensation. Counsel for the appellant has also placed reliance on the judgment of the Supreme Court reported in *2007 (9) Scale 216*, **New India Assurance Company Ltd. Vs. Smt. Shanti Pathak & Ors.** to contend that the Apex Court had interfered to lower down the compensation amount even in a case where the insurer had not taken any permission from the Court under Section 170 of the Motor Vehicles Act. Counsel for the appellant also contends that the Hon'ble Supreme Court has already referred the said issue of lack of competence of the insurer to assail the findings of the Tribunal on the ground of quantum of

compensation and negligence to a larger Bench and, therefore, this Court may follow the decision of the Supreme Court in this regard.

After having given my thoughtful and conscious consideration to the issue involved in the present case, I am of the view that the issue is no more res integra as in the judgments cited by the respondent, the Hon'ble Supreme Court has authoritatively held that in the absence of permission sought from the Court as envisaged under Section 170 of the Motor Vehicles Act, the insurer has no right to file an appeal to challenge the quantum of compensation or finding of the Tribunal as regards the negligence or contributory negligence of offending vehicles is concerned. It would be appropriate to refer Section 170 of the Motor Vehicles Act as under:-

> "**170. Impleading insurer in certain cases**- Where in the course of any inquiry the Claims Tribunal is satisfied that -
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> (a) there is collusion between the person making the claim and the person against whom the claim is made, or
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> (b) the person against whom the claim is made has failed to contest the claim,
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> It may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such

> claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

It is an admitted case between the parties that no such permission under Section 170 of the Motor Vehicles Act was sought by the appellant which clearly means that the procedure laid down under Section 170 of the Motor Vehicles Act was not followed. In the judgment of the Supreme Court reported in (*1998) 3 SCC 140,* ***Shankarayya Vs. United India Insurance Co. Ltd.,*** the Supreme Court has held that the insurance company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in Section 170 are found to be satisfied and for that purpose the insurance company has to obtain an order in writing from the Tribunal and such an order should be a reasoned order of the Tribunal. In such circumstances unless the said procedure is followed, the appellant insurer cannot have a wider defence on merits than what is available to it by way of a statutory defence. Ralevant part of Para 4 of the said judgment in this regard is referred as under:-

> **"4.** It clearly shows that the Insurance Company when impleaded as a party by the Court can be permitted to contest the proceedings on merits only if the conditions precedent mentioned in the section are found to be satisfied and for that purpose the Insurance Company has to obtain order in writing from the Tribunal and which should be a reasoned order by the Tribunal. Unless that procedure is followed, the Insurance Company cannot have a wider defence on merits than what is available to it by way of statutory defence. "

In view of the said legal position, I cannot appreciate the argument of counsel for the appellant that even without seeking permission of the Court as required under Section 170, the Appellant can proceed with the appeal. Once the application under Section 170 of the Motor Vehicles Act was preferred by the appellant before the Tribunal for taking over the defence of an owner or driver, the Tribunal is required to pass specific order and that too a reasoned order as per the observations of the Supreme Court referred above and, therefore, in the instant matter the argument of counsel for the appellant cannot be appreciated that non-filing of an application under Section 170 of the Motor Vehicles Act by the appellant in this regard is no bar in preferring present appeal.

In the light of the above discussion, I do not find any

merit in the submission of counsel for the appellant. The judgment cited by the counsel in **Shanti Pathak's** case (supra) has not dealt with the said legal proposition and, therefore, the same is not applicable in the facts and circumstances of the present case.

There is no merit in the appeal and the same is dismissed.

October 10, 2007 **KAILASH GAMBHIR, J.**